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ATTORNEY FOR PLAINTIFF
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. SHAWN MATTHEW RUSSELL, Defendant.	CR 10-13-H-CCL <u>OFFER OF PROOF</u>
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Plaintiff, United States of America, by and through its counsel of record, Marcia Hurd, Assistant U.S. Attorney for the District of Montana, hereby files its Offer of Proof.

THE CHARGE

The defendant, Shawn Matthew Russell, is charged by Indictment with Receipt of Sexual Exploitation of Children (Count I), in violation of 18 U.S.C. § 2251; Coercion and Enticement (Count II), in violation of 18 U.S.C. § 2422(b); Transportation of a Minor with Intent to Engage in Criminal Sexual Activity (Count III), in violation of 18 U.S.C. 2423(a); Travel with Intent to Engaged in Illicit Sexual Conduct with a Minor (Count IV), in violation of 18 U.S.C. § 2423(b); and Possession of Child Pornography (Count V), in violation of 18 U.S.C. § 2252A(a)(5)(B). He is also charged with a related forfeiture allegation pursuant to 18 U.S.C. § 2253(a).

PLEA AGREEMENT

There is a plea agreement in this case; Shawn Matthew Russell will plead guilty to Counts IV and V of the Indictment and will agree to the forfeiture allegation.

ELEMENTS OF THE CHARGES TO WHICH HE WILL PLEAD

In order for the defendant to be found guilty of the charges of Travel with Intent to Engage in Illicit Sexual Conduct with a Minor, as charged in Count IV of the Indictment, in violation of 18 U.S.C.

§ 2423(b) and Possession of Child Pornography, as charged in Count V of the Indictment, in violation of 18 U.S.C. 2252A(a)(5)(B), the United States must prove each of the following elements beyond a reasonable doubt:

TRAVEL WITH INTENT TO ENGAGE IN ILLICIT SEXUAL CONDUCT WITH A MINOR - COUNT IV

First, that defendant traveled in interstate commerce;

Second, the purpose of the interstate commerce was to engage in any illicit sexual conduct with another person.

POSSESSION OF CHILD PORNOGRAPHY - COUNT V

First, that defendant knowingly possessed computer disks or any other material which defendant knew contained visual depictions of minors engaged in sexually explicit conduct;

Second, defendant knew the visual depictions contained in the computer disks or any other material contained minors engaged in sexually explicit conduct;

Third, defendant knew that production of such visual depictions involved use of minor in sexually explicit conduct; and

Fourth, that each visual depiction had been either

- (a) mailed or shipped or transported in interstate or foreign commerce by any means, including by computer, or
- (b) produced using material that had been mailed or shipped or transported in interstate or foreign commerce by any means, including by computer.

In order for property to be forfeited pursuant to the forfeiture allegation, the United States would need to prove that certain property or proceeds were used to facilitate the commission of the offense in Count IV and V.

PENALTY

The charge in Count IV of the Indictment carries a maximum sentence of up to thirty years imprisonment, a \$250,000 fine, and not less than five years up to lifetime supervised release. The charge in Count V of the Indictment carries a maximum sentence of ten years imprisonment, a \$250,000 fine, and not less than five years up to lifetime supervised release. The forfeiture allegation carries a forfeiture of the specified property.

ANTICIPATED EVIDENCE

If this case were tried in United States District Court, the United States would prove the following:

In June 2010, Helena Detective Bryan Fischer received a report from the Pendleton, Oregon, Police Department that Helena resident Shawn Matthew Russell, age 23, had met an underage girl via the internet, developed a sexual relationship with her, and both traveled to have sex with her and transported her across state lines for sexual activity. The fifteen year old girl reported that she met Russell in an on-line game room via the internet in approximately September 2009. The girl's mother, utilizing a web cam, communicated with Russell and told Russell to stay away from the girl, as she was not of majority age. However, the two continued contact through text messages via cell phone, web cam via computer and the internet and other means. The fifteen year old girl reported the conversations between she and Russell were sexual in nature and included conversations about engaging in sexual activity with Russell knowing the girl was only fifteen years of age.

In December 2009, Russell traveled to Oregon where he picked the girl up close to her home and the two traveled to a local motel in the girls' hometown and they had sexual intercourse. The following day, Russell transported the girl from Oregon through Washington and again obtained a motel room and the two engaged in sexual intercourse. The next day, Russell traveled to Montana with the fifteen year old girl, spending the evening in two Montana cities, obtaining hotel rooms and engaging in sexual intercourse. Eventually, Russell and the fifteen year old girl arrived in Helena where Russell's mother learned of the girl's presence and arranged for her to fly back home to her family in Oregon.

At all times, the girl was incapable of consent due to her age. In follow-up emails, Russell expressed that he had no regrets about what had happened, and that her age of 15 did not matter to him. Law enforcement officers verified Russell's use of credit cards and cash payments for the travel and hotel stays that he used when traveling to meet the girl and transporting her for sexual activity.

Russell's computer was seized and forensically examined. Numerous images of the underage girl engaged in sexually explicit

conduct were located; those images were saved by Russell via web cam and the internet and he continued to possess them on his computer.

DATED this 1st day of December, 2010.

MICHAEL W. COTTER
United States Attorney

/s/ Marcia Hurd
MARCIA HURD
Assistant U.S. Attorney
Attorney for Plaintiff